

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

DOCKET NO. 2001-707

October 12, 2001

BANGOR GAS COMPANY, LLC,  
Request for Approval of Affiliated  
Transaction with Sempra Energy  
Trading Company (§707)

ORDER AND TEMPORARY  
PROTECTIVE ORDER No. 1 –  
Gas Supply Bid and Usage  
Information, Contract Terms, and  
Customer Information

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On October 10, 2001, BGC filed a request for approval of an affiliated transaction with Sempra Energy Trading Company (SETC) proposed to provide gas supply for BGC's winter 2001-2002 period needs. The Commission has assigned this filing Docket No. 2001-707. BGC and SETC propose to amend a contract, originally approved on February 26, 2001 in *Bangor Gas Company LLC, Application for Approval of Affiliated Interest Transaction with Sempra Energy Trading Company and/or for Waiver or Exemption*, Docket No. 2000-938, for a second time to allow SETC to supply BGC with its gas supply needs for the winter 2000-2001 period.<sup>1</sup>

In its application, Bangor Gas requested that the Hearing Examiner issue a protective order "for the same reasons and under the same terms as the protective order issued June 21, 2001[in Docket Nos. 2000-938 and 2001-122]" to protect commercially sensitive information in its filing.

On August 15, 2001, Bangor Gas Company, LLC (Bangor Gas or BGC) filed its proposed cost of gas adjustment for the winter 2001 period. We assigned this filing Docket No. 2001-560.<sup>2</sup> The Hearing Examiner issued a protective order on October 3, 2001 in Docket No. 2001-560 protecting gas supply bid and usage information, facilities, marketing and customer information.<sup>3</sup> In its Docket No. 2001-707 filing, Bangor Gas has marked for confidential treatment portions of the testimony of its witness, Heidi J.

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<sup>1</sup> A previous extension of the contract to extend it through the summer 2001 period was approved in Docket No. 00-938 on June 21, 2001. See Order and Protective Order in *Bangor Gas Company LLC, Application for Approval of Affiliated Interest Transaction with Sempra Energy Trading Company and/or for Waiver or Exemption (reopened to consider contract extension)*, Docket No. 2000-938 and *Bangor Gas Company LLC, Proposed Cost of Gas Adjustment For Summer 2001 Period*, Docket No. 2001-122.

<sup>2</sup> *Bangor Gas Company, LLC, Proposed Cost of Gas Adjustment*, Docket No. 2001-560.

<sup>3</sup> At the technical conference held September 26, 2001, prior to the issue of a written protective order, the Hearing Examiner orally granted the protective order to ensure that sensitive information disclosed therein would be kept confidential.

Harnish relating to its gas supply bid analysis and proposed contract terms. In addition, at the technical conference in Docket No. 2001-560, during confidential session, BGC provided commercially sensitive information regarding BGCs gas supply bids and selection analysis, anticipated customer demand, marketing activities, and business strategy.

BGC has requested that the record in Docket No. 2001-560 be incorporated in this docket. That request is granted because it will facilitate the consideration of the proposed contract amendment with SETC.

Bangor Gas requests that the gas supply bids, analysis, and proposed supply contract with SETC be protected from public disclosure because, it asserts, information pertaining to projected load, terms of gas purchases, and proposed or negotiated arrangements concerning gas pricing are highly proprietary. Bangor Gas contends that gas supply contracts are negotiated in a highly competitive environment, both with respect to the provider of gas supplies and the local distribution company (LDC) and that a protective order is necessary to prevent sensitive information related thereto from being used by competitors or potential competitors.

The Hearing Examiner notes that the Commission has granted Protective Orders on similar requests involving gas utility costs, revenues, financial analyses, customer information, or special contract details, releasing the information only to certain parties. See *Maine Natural Gas LLC*, Docket No. 2000-331, Invitation to Comment and Temporary Protective Order for Natural Gas Utility 1999 Annual Reports (Apr. 13, 2000); *Bangor Gas Company, LLC*, Docket No. 97-795, Procedural Order Issuing Temporary Protective Order (Oct. 28, 1997); and *Northern Utilities, Inc., Petition for Approval of a Firm Gas Transportation Agreement and Related Rates*, Docket No. 2000-848, Revised Protective Order No. 1 (Nov. 17, 2000). In addition, the Hearing Examiner provided protection of the initial contract in Docket No. 2000-938. See Temporary Protective Order No. 1.

Also, we have protected bid and contract information submitted in connection with affiliated interest transactions between the two entities. See e.g., *Central Maine Power Company, Request for Approval of Affiliated Interest Transaction with Union Water Power Company for Section 145/168 Power Line Structure Rebuild*, Docket No. 2000-672, Temporary Protective Order No. 1 (Aug. 10, 2000) (bid responses and related information) and *Central Maine Power Company, Request for Waiver of Prior Approval of Affiliate Transaction to Assist in Emergency Storm Repair*, Docket No. 2000-1023, Temporary Protective Order No. 1 (specific contract information for storm restoration services.) We have provided confidential treatment to bids and bid selection information to transactions between affiliates when its release would be damaging to the interests of the utility and its ratepayers. In Docket No. 2000-672, the Hearing Examiner found that bid information qualifies as confidential commercial information because "if vendors have access to such information they likely may be more inclined to submit future offers in a narrow price band around a previously disclosed winning bid, which would not necessarily result in a least-cost bid." In Docket No. 2000-1023, the Hearing Examiner

concluded that release of specific contract pricing and terms might result in a reluctance of the vendor to contract with CMP which could result in higher rates paid by ratepayers.

As in past cases, the Hearing Examiner finds that this information constitutes trade secrets and confidential commercial information, that such information has value to Bangor Gas, potential gas supply bidders, and to other competitors, and that its release would be damaging to the interests of the Company and its customers. Therefore, this information shall be disclosed only to the Commission, its Staff and the Office of the Public Advocate as well as employees or consultants thereof pursuant to the terms of a protective order.

I conclude that the limited and revocable protection requested by Bangor Gas for bid information and the proposed gas supply contract and its amendment and any supporting analysis is warranted under Rule 26(c) of the Maine Rules of Civil Procedure and grant protection subject to the requirements of 35-A M.R.S.A. §1311-A, and allow Bangor Gas further opportunity to appeal this order at a future time if necessary, as noted in paragraph 4 herein.

Any party at any time can move for a finding that material subject to protection should no longer be protected or that the other party should be provided access to the protected information pursuant to protective provisions. Unless such a motion is granted, however, use of the allegedly confidential materials continues to be restricted by the terms of this Protective Order.

Accordingly, it is

**O R D E R E D**

1. That Bangor Gas Company, LLC's gas supply contract bid information and analysis, as well as information regarding BGC's customers, existing or projected load, and proposed gas supply contract with Sempra Energy Trading Company, shall be considered "Designated Confidential Information" for purposes of this Order and, until this Order is modified, access to Designated Confidential Information shall be limited as described in Paragraph 4 below.
2. That all Designated Confidential information shall, unless removed from the coverage of this Order as provided in paragraph 3 below, be and remain confidential. Designated Confidential Information shall not be disclosed for any purpose other than the purposes of this proceeding, and then solely in accordance with this Order. No person to whom access to Designated Confidential Information is accorded pursuant to paragraph 4 of this Order shall disclose or reveal, directly or indirectly, the content of the Designated Confidential Information to others, except as provided in paragraph 4.
3. That the parties to whom Designated Confidential Information is furnished may challenge the designation of any documents or other information as confidential by motion to the Commission and upon reasonable prior notice to the parties and

an opportunity for hearing. Upon the entry of a final unappealed decision granting such a motion, the provisions and restrictions of this Order shall cease to bind any party or other person with respect to the documents or information that the order granting the motion shall have expressly and clearly removed from the coverage of this Order.

4. That, until this Order is modified, access to Designated Confidential Information shall be limited to (i) Commission members and counsel; (ii) the Public Advocate and counsel; (iii) counsel, employees, independent consultants or experts retained by the Commission (including both advisory and advocacy staff) or the Public Advocate in connection with this proceeding; (iv) a stenographer or reporter recording any hearing in connection with this proceeding; (v) counsel for or any other representative of Bangor Gas; and (vi) counsel and independent consultants for any party to this proceeding, subject to the terms of 35-A M.R.S.A. § 1311-A, for use solely for purposes of this proceeding and on condition that they not disclose the Designated Confidential Information to others, and provided further that the attorney does not have "a personal and substantial financial interest that could be benefited by access to the information to the detriment of the party providing that information. 35-A M.R.S.A. § 1311-A(1)(D)(2). Bangor Gas will be entitled to seek reconsideration of this order in the event any additional person or entity seeks and is granted intervention in this proceeding. Bangor Gas will not be required to release the Designated Confidential Information to an intervener until the Commission has ruled on its reconsideration of this order.
5. That all materials claimed by Bangor Gas to be Designated Confidential Information under the terms of this Order shall be clearly marked "confidential" by Bangor Gas. In the case of documents, each page of any such document shall be stamped "confidential" in bold lettering in the upper right hand corner of each page including the cover letter. Any document or portion thereof not clearly and conspicuously marked "confidential" in bold lettering shall not be protected under the terms of this Order. Faxed materials should be marked as any other document. With regard to other media, diskettes should be marked "confidential" on the outside and, to the extent possible, each file on the diskette should be similarly identified. Any person or party subject to the terms of this Order who receives unmarked documents or materials which he/she believes Bangor Gas intended to be protected by the terms of this Order, and that would have been protected if marked in accordance with this paragraph, shall make a good faith effort to notify Bangor Gas of this fact and to avoid use of such documents or materials in a manner inconsistent with protection of such material under this Order.
6. That no copies of Designated Confidential Information furnished by Bangor Gas shall be circulated to persons other than those persons who are authorized under Paragraph 4 of this Order to obtain Designated Confidential Information. Documents offered in evidence may be copied as necessary for that purpose.

Persons authorized under Paragraph 4 hereof also may take such notes as may be necessary solely for the purposes of this proceeding. Those notes shall also be treated as Designated Confidential Information.

7. That the restrictions upon, and obligations accruing to, persons who become subject to this Order shall not apply to any Designated Confidential Information submitted in accordance with paragraph 1 of this Order if the Commission rules, after reasonable notice and hearing, that the Designated Confidential Information was publicly known at the time it was furnished or has since become publicly known through no fault of the receiving party.
8. That where reference to Designated Confidential Information is required in pleadings, briefs, other legal documents, or argument, that reference shall be by citation of title or exhibit number only or by some other non-confidential description to the extent possible. In those circumstances, counsel shall make every reasonable effort to preserve the confidentiality of material in the sealed record. If counsel shall include Designated Confidential Information in pleadings, briefs, other legal documents, or arguments, that portion of the documents or that portion of the transcript of the argument containing Designated Confidential Information shall be maintained under seal.
9. That the Commission may draw upon all Designated Confidential Information in the record in the deliberation of any decision or order that it may issue, but the Commission will avoid the reproduction in its decision of any Designated Confidential Information.
10. That should any appeal of, or other challenge to, the Commission's decision in this proceeding be taken, any portions of the record that have been sealed in accordance with paragraph 10 shall be forwarded to the courts of this State in accordance with applicable law and procedures, but under seal and so designated in writing for the information of the court.
11. That this Order does not preclude any party from (a) objecting under the Maine Rules of Evidence to the admissibility of any Designated Confidential Information produced by Bangor Gas or (b) objecting, on any substantive or procedural ground, to any subsequent data request or other request for information.
12. That Bangor Gas may, at its option, provide to each person (other than the Commissioners or Commission Staff) having access to Designated Confidential Information a copy of this Order and require each person to agree in writing to the terms hereof prior to obtaining access to the Designated Confidential Information.
13. That Designated Confidential Information furnished by Bangor Gas pursuant to this Order and made part of the record in any proceeding before the Commission shall remain in the possession of the Commission, under seal, and subject to the

protective requirements of this Order, until this Commission or its authorized presiding officer shall otherwise order.

14. That this Order may be modified on motion of any party or on the Commission's own motion upon reasonable prior notice to the parties and an opportunity for hearing.
15. Copies of Designated Confidential Information and documents, notes and other materials containing or reflecting, directly or indirectly, the Designated Confidential Information, that are in the possession of Commission members, counsel or employees (including both advisory and advocacy staffs) of the Commission may be retained by those persons for the purpose of performing those persons' duties and obligations. If retained, the Designated Confidential Information shall be subject to this Protective Order or to a protective order issued in another proceeding in which the Designated Confidential Information is used. If a Commission member, counsel or employee of the Commission does not retain the Designated Confidential Information, that person shall destroy it as provided in this paragraph. Within 40 days after the Commission reaches a final decision (i.e., unappealable) in this proceeding, each other party and Commission independent consultants and experts retained by the Commission to whom Designated Confidential Information has been made available shall destroy all documents, notes and other materials containing or reflecting, directly or indirectly, the Designated Confidential Information. Audio, video or other such magnetically recorded materials shall be electronically erased before disposal. Documents shall be shredded.
16. That, notwithstanding paragraph 15 of this Order, the sealed record of this proceeding shall be retained by the Commission and shall continue to remain subject to the confidentiality requirements of this Order until otherwise ordered by the Commission.

Dated at Augusta, Maine, this 12th day of October, 2001.

BY ORDER OF THE HEARING EXAMINER

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Carol A. MacLennan